

Alexandria Division

V.

) Criminal No.

Defendant.

purchased on the Defendant's website were reproduced and distributed either by instantaneous computer download of an electronic copy and/or by shipment through the mail of a copy on compact disc. The Defendant was responsible for the operations of www.iBackups.net including the reproduction and distribution of software products sold on the website.

2. The Defendant had total copyrighted software sales of \$5,402,448 during the time period of April 2003 to February 2005. This calculation is based on numerous sources of evidence. Total sales of \$362,018 from April 2003 through December 2003 were based on records of sales processed by Paypal for Defendant and Defendant's Washington Mutual Bank statements indicating deposits from various credit card processors. Total sales of \$3,993,402 in 2004 were based on the sales figures listed on the profit and loss statement for the time period January 2004 through December 2004 prepared by Defendant's accountant in 2005 for filing of federal and state tax returns. Total sales of \$1,047,028 in 2005 were based on the records of credit card transactions processed by Dutrac for Defendant and Defendant's Union Bank statements indicating deposits from various credit card processors.

3. As part of a FBI investigation regarding www.iBackups.net, FBI Special Agent John Ohashi made 13 undercover purchases of software products from the Defendant's website from September 2003 to January 2005 with an undercover identity, an undercover mailing address in the Eastern District of Virginia, and an undercover credit card using the online payment system on www.iBackups.net. These purchases were of copyrighted software programs from Macromedia Inc., Adobe Systems, Inc., Symantec Corporation, and Sonic Solutions.

4. On September 3, 2003, SA John Ohashi purchased one copy each of "Adobe Acrobat 6.0 Professional Full" and "Macromedia Studio MX Full" for \$74.95 and \$99.95, respectively, from

www.iBackups.net. The suggested retail value of these software titles are \$649.00 and \$899.00, respectively. Copies of these software titles on Compact Disc (“CD”) were subsequently mailed by the Defendant (or other individuals under his direction and control) to the undercover mailing address for SA John Ohashi located in the Eastern District of Virginia.

5. On October 2, 2003, SA John Ohashi purchased one copy each of “Roxio Easy CD & DVD Creator 6 Platinum Full,” “Symantec Internet Security 2003 Full,” and “Symantec pcAnywhere 11.0 Host and Remote Full” for \$32.95, \$29.95, and \$29.95 respectively, from www.iBackups.net. The suggested retail value of these software titles are \$79.95, \$70.00, and \$200.00, respectively. Copies of these software titles on CD were subsequently mailed by the Defendant (or other individuals under his direction and control) to the undercover mailing address for SA John Ohashi located in the Eastern District of Virginia.

6. On November 6, 2003, SA John Ohashi purchased one copy of “Adobe Illustrator 10 Full” for \$79.95 from www.iBackups.net. The suggested retail value of this software title is \$499.00. A copy of this software title was downloaded by SA John Ohashi to the Eastern District of Virginia from the Defendant’s website upon purchase.

7. On December 10, 2003, SA John Ohashi purchased one copy each of “Adobe After Effects 6.0 Professional FULL,” “Adobe Font Folio 9.0 FULL,” “Adobe Illustrator CS (v11) Full,” and “Adobe Photoshop 8.0 CS Full” for \$79.95, \$79.95, \$69.95, and \$119.95 respectively, from www.iBackups.net. The suggested retail value of these software titles are \$699.00, \$8,999.00, \$499.00, and \$649.00, respectively. Copies of these software titles were downloaded by SA John Ohashi to the Eastern District of Virginia from the Defendant’s website upon purchase.

8. On December 15, 2003, SA John Ohashi purchased one copy of “Roxio Easy CD & DVD Creator 6 Platinum Full” for \$29.95 from www.iBackups.net. The suggested retail value of this software title is \$79.95. A copy of this software title was downloaded by SA John Ohashi to the Eastern District of Virginia from the Defendant’s website upon purchase.

9. On January 5, 2005, SA John Ohashi purchased two copies of “Adobe Photoshop 8.0 CS Full” for \$149.95 each from www.iBackups.net. The suggested retail value of this software title is \$649.00. A copy of this software title was downloaded by SA John Ohashi to the Eastern District of Virginia from the Defendant’s website upon purchase and a copy on CD was subsequently mailed by the Defendant (or other individuals under his direction and control) to the undercover mailing address for SA John Ohashi located in the Eastern District of Virginia.

10. On January 10, 2005, SA John Ohashi purchased two copies of “Roxio Easy CD & DVD Creator 6 Platinum Full” for \$29.95 each from www.iBackups.net. The suggested retail value of this software title is \$79.95. A copy of this software title was downloaded by SA John Ohashi to the Eastern District of Virginia from the Defendant’s website upon purchase and a copy on CD was subsequently mailed by the Defendant (or other individuals under his direction and control) to the undercover mailing address for SA John Ohashi located in the Eastern District of Virginia.

11. On January 25, 2005, SA John Ohashi purchased two copies each of “Adobe After Effects 6.0 Professional FULL” for \$69.95 and “Adobe After Effects 6.5 Professional FULL” for \$129.95 from www.iBackups.net. The suggested retail value of these software title are \$266.99 and \$999.99, respectively. One copy of each software title was downloaded by SA John Ohashi to the Eastern District of Virginia from the Defendant’s website upon purchase and one copy each on CD

was subsequently mailed by the Defendant (or other individuals under his direction and control) to the undercover mailing address for SA John Ohashi located in the Eastern District of Virginia.

12. On February 24, 2005, FBI agents executed search and seizure warrants at the defendant's residence in Saugus, CA; his business at 20000 Plum Canyon Road, Unit 1011, Santa Clarita, CA 91350; and three computer servers located at 818 W. 7th Street, 6th Floor, Los Angeles, CA 90017. At that time, agents seized numerous computers and related equipment as well as a large number of CDs bearing the www.iBackups.net logo. Forensic analysis of the evidence indicates that the seized computer equipment was used to reproduce significantly more than 10 copies of copyrighted works. Forensic analysis of the computers seized also revealed records of software sales by Defendant in 2004 and 2005. Additionally, large numbers of CD reproductions of copyrighted works that appear to have been awaiting mail shipment were seized.

13. According to www.iBackups.net software sales records obtained from one of the Defendant's computers, the Defendant sold 18 copies of "Adobe Photoshop 8.0 CS Full," 16 copies of "Symantec pcAnywhere 11.0 Host and Remote Full," and 22 copies of "Roxio Easy CD & DVD Creator 6 Platinum Full" on December 13, 2004. The suggested retail value of each of these software titles are \$649.00, \$200.00, and \$79.95, respectively.

14. Based on the FBI undercover buys, the Defendant sold 11 copies of copyrighted works with a total retail value of \$13,122.90 during the time period September 3, 2003 through December 15, 2003.

15. Based on the FBI undercover buys and the Defendant's own sales records, the Defendant sold 64 copies of copyrighted works with a total retail value of \$20,632.76 during the time period December 1, 2004 through January 30, 2005.

16. The software titles purchased by SA John Ohashi from www.iBackups.net were analyzed by the software copyright holders or their designated representatives (the Business Software Alliance (“BSA”) or the Software and Information Industry Association (“SIIA”)). According to software copyright holders, BSA, or SIIA, the software purchased by SA John Ohashi from www.iBackups.net were unauthorized reproductions of their copyrighted software. The software copyright holders, BSA, or SIIA also confirmed the suggested retail value for copies of the software purchased by SA John Ohashi as described herein. No copyright holder or representative authorized www.iBackups.net or the Defendant to sell, reproduce, or distribute these software products.

17. Defendant acknowledges that, through the acts of himself and others under his direction and control, he caused the reproduction and distribution over the Internet and through the mail of more than 10 copies of copyrighted works within a 180-day period having a total retail value of more than \$2,500 for private financial gain, within the meaning of the criminal copyright statute, see 17 U.S.C. §§ 101 & 506(a)(1), and Federal Sentencing Guidelines § 2B5.3, Application note 1.

18. The Defendant admits that his actions included manufacture and uploading of infringing items protected by copyright, within the meaning of the provisions of Section 2B5.3(b)(2) of the applicable Federal Sentencing Guidelines.

19. The government agrees that it will not seek an “Aggravating Role” enhancement against the Defendant under the provisions of Section 3B1.1 of the applicable Federal Sentencing Guidelines.

20. The Defendant and government agree to recommend to the Court, based on the evidence now known to the government, that the infringement amount under the provisions of

§2B5.3(b)(1) of the applicable Federal Sentencing Guidelines attributable to the Defendant should be more than \$7,000,000 but less than \$20,000,000.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Jay V. Prabhu
Special Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between the Defendant, Nathan Peterson, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Nathan Peterson
Defendant

I am Nathan Peterson's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Mark Werksman
Counsel for Nathan Peterson

Date: _____